

Licenses that meet the requirements set forth at 86 Ill. Adm. Code 130.1935(a)(1)(A-E) constitute nontaxable licenses of software. (This is a PLR).

April 23, 1999

Dear Mr. Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see enclosed), is in response to your letter of November 9, 1998. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

Over the past six months COMPANY reviewed its sales and use tax compliance in various states. As a result we applied to the State of Illinois for Voluntary Disclosure. Our application was accepted on October 7, 1998. In all of the periods covered we have filed corporate tax returns. Upon further review of the sales tax regulations, we feel that our software is non taxable since we meet the criteria of Title 86 Part 130 Section 130.1935 Computer Software.

The following is provided to meet the requirements of the aforementioned regulation:

Title 86 Part 130 Section 130.1935 Computer Software

Criteria	Response
1. It is evidenced by a written agree-ment signed by the licensor and the customer	All orders are supported by a sales order supplement which references our standard terms and conditions Part 1
2. It restricts the customer's duplication and use of the software	Part 2a
3. It prohibits the customer from licensing, sublicensing or transferring the software to a third party	Part 2d
4. The vendor will provide	Yes*

another copy at minimal or no charge if the customer loses or damages the software

5. The customer must destroy or return all copies of the software to the vendor at the end of the license period
- Part 3

* Although not explicitly stated in the license agreement, the Company has a policy of providing another copy of the software to the customer at no cost if it is lost or damaged by the customer. The policy states the Company will upon the Customer's request and for no additional license fee replace any Company software licensed to the Customer, which is destroyed. The replacement software will be at the same version as the destroyed software.

Based upon the facts presented above, the Company respectfully requests that the Department issue a determination to the effect that software licenses used by the Company and presented to the Department of Revenue for review are nontaxable licenses of software under the provisions of 86 Illinois Administrative Code Sec. 130.1935. If you anticipate issuing a determination that does not agree with the information requested, I would appreciate the opportunity to discuss any issues in detail with you prior to a ruling.

Enclosed please find a copy of our standard license, your October 7, 1998 voluntary compliance letter and a copy of 86 Illinois Administrative Code Sec. 130.1935. I hope this information is helpful. If you require further information, please contact me at #####.

If transactions for the licensing of computer software meet all of the criteria provided in 86 Ill. Adm. Code 130.1935(a)(1)(A-E), enclosed, neither the transfer of the software or the subsequent software updates will be subject to Retailer's Occupation Tax.

A license of software is not a taxable retail sale if:

- A) it is evidenced by a written agreement signed by the licensor and the customer;
- B) it restricts the customer's duplication and use of the software;
- C) it prohibits the customer from licensing, sublicensing or transferring the software to a third party (except to a related party);
- D) the vendor will provide another copy at minimal or no charge if the customer loses or damages the software; and
- E) the customer must destroy or return all copies of the software to the vendor at the end of the license period.

Based upon the information you have provided, it is our opinion that the software licenses that Object Design, Inc. issues pursuant to the "Object Design, Inc. Order Supplement," together with the "Object Design Standard Shrink-Wrap Terms and Conditions" submitted for review, are nontaxable licenses of software under 86 Ill. Adm. Code 130.1935.

As stated above, licenses of computer software are not taxable if they meet all of the criteria listed in Section 130.1935(a)(1). We find that requirement (A) above is met by the Object Design, Inc. Order Supplement when the Object Design Standard Shrink-Wrap Terms and Conditions are incorporated by reference as part of the signed agreement. We also find that requirement (B) is met by section 2(a) of the Object Design Standard Shrink-Wrap Terms and Conditions.

Item (C) requires that the customer be prohibited from licensing, sublicensing or transferring the software to a third party. The provisions in the Object Design Standard Shrink-Wrap Terms and Conditions, section 2(d) prohibit the customer from licensing, sublicensing or transferring the software to a third party without written permission from Object Design, Inc. or unless the transferor relinquishes all copies of the software to the transferee and the transferee notifies licensor it agrees to all terms and conditions of the agreement. It is our opinion that this is sufficient to satisfy requirement (C).

Item (D) above requires the license to contain a provision requiring the vendor to provide another copy at minimal or no charge if the customer loses or damages the software. The Department has deemed software license agreements to have met this criteria if the agreements do not contain a provision about the loss or damage of the software, but the vendors' records reflect that they have a policy of providing copies of software at minimal or no cost if the customers lose or destroy the software. You have indicated that Object Design has such a policy.

Item (E) requires a license to require a customer to destroy or return all copies of the software to the vendor at the end of the license period. Section 3 of the Object Design Standard Shrink-Wrap Terms and Conditions satisfies this requirement.

The facts upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote
Associate Counsel

ST 99-0019-PLR

MPM:msk
Enc.